



**MASHPEE ZONING BOARD OF APPEALS
MEETING MINUTES
JANUARY 11, 2017**

The Mashpee Zoning Board of Appeals held Public Hearings on Wednesday, January 11, 2017, at 6:00 p.m. in the Waquoit Room at the Mashpee Town Hall, 16 Great Neck Road North. Chairman, Jonathan D. Furbush, Board Members William A. Blaisdell, Dom DeBarros, and Associate Members, Brad Pittsley and Norman J. Gould were present. Building Commissioner, Michael Mendoza was also present.

PLEDGE OF ALLEGIANCE

NEW HEARINGS

42 Spoondrift Way: Owners, William M. and Christine Herbert request a Variance from setback requirements, and lot coverage under §174-31, and §174-33 setback from water and wetlands, of the Zoning Bylaws to allow for construction of a detached garage on property located in an R-3 Zoning District, Map 111 Parcel 127, Mashpee, MA.

Christine and Bill Herbert, homeowners represented themselves for their garage project. The garage will be a 24 x 24 foot structure and will be approximately 10 ft. from the side yard, and is 30.8 feet from the front. The existing lot coverage is 13.0% and the proposed lot coverage will be 17.1%. The house was built in 1962 and the Herbert's have owned the house for 12 years.

Mr. Mendoza pointed out to the Board that the space between the house and the proposed garage is 8.3 ft. He said given the 5 ft. extra space on the side, the garage would be too close to the primary structure and might be a fire hazard.

Mr. Furbush asked if there would be drywells installed to prevent rain water runoff.

Mr. Blaisdell commented that there should be no living space above the garage.

Mr. Furbush read the comments from Conservation, Board of Health and Inspection Departments into the record.

Mr. Blaisdell made a motion approve the 5 ft. Variance request with the following conditions; A plot plan from BSS Design, Proposed Garage, Prepared for William and Christine Herbert, 42 Spoondrift Way, Mashpee, MA. Scale: 1" = 20', Date: April 26, 2007, Drawn by: EJP, RAR, TJB, Job Number: 6172, Drawing Number: P12-115, Revisions: Added proposed planning and notes for Conservation, 4/2/09, TJB. Increased planning, revised prop patio 5/14/09. Also conditioned upon all the department comments read into the record, and no heating, or living space over the proposed garage.

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Mr. Pittsley seconded, yes. Mr. Blaisdell, yes, Mr. Gould, yes, Mr. Furbush, yes, and Mr. DeBarros, yes. All were in favor of the detached garage.

43 Monahansett Road: Owners, Paul A. and Cynthia A. Jalbert, Trustees request a Variance under §174-33 setbacks from water and wetlands of the Zoning Bylaws to allow for construction of a deck on property located in an R-3 Zoning District, Map 123 Parcel 103, Mashpee, MA.

Cynthia Jalbert represented herself for the deck project. She said her house is currently under construction for a second floor addition and garage. There was a land swap done on the adjacent property that was approved by the Planning Board, so that her property and the adjacent property would both have conforming lots. Conservation approved the deck, but the applicant was told to file with the ZBA because the deck is within the 50 ft. buffer of the water and wetlands. The new deck will be built in the same area as the old deck, and will extend toward the back of the garage. The property is also in the Popponesset Overly District.

Mr. Furbush read the comments from Conservation, Board of Health, and Inspection Department into the record.

Mr. Mendoza suggested that the applicant contact the Board of Health to confirm that they have approved the building plans, and that they will need to see the plans for the deck prior to issuing the building permit.

Mr. Blaisdell made a motion to approve the deck project under §174-33 setbacks from water and wetlands, and conditioned upon the following; A plot plan for 43 Monahansett Road, Mashpee, MA, Prepared for: Cynthia Jalbert, Prepared by: JC Engineering Inc., 2854 Cranberry Hwy, East Wareham, MA 02538, Scale: 1" = 10', July 7, 2016, Rev: August 5, 2016, Rev: November 3, 2016, JCE #2568-1. Also is conditioned upon all department comments read into the record, and the Board of Health requirement to review the building plans of the deck.

Mr. Gould seconded, yes. Mr. Pittsley, yes, Mr. Furbush, yes, Mr. Blaisdell, yes and Mr. DeBarros, yes. All were in favor of the deck project.

38 Shorewood Drive: Owners, Andrew J. and Kari Fietek request a Written Finding under §174-17 of the Zoning Bylaws to allow for an 8 x 12 addition, and an alteration to a pre-existing, non-conforming single-family dwelling located in an R-5 Zoning District, Map 58 Parcel 39, Mashpee, MA.

38 Shorewood Drive: Owners, Andrew J. and Kari Fietek request a Variance from the setback requirements, and lot coverage under §174-31 of the Zoning Bylaws, to allow for an 8 x 12 addition, and an alteration to a pre-existing, non-conforming single-family dwelling located in an R-5 Zoning District, Map 58 Parcel 39, Mashpee, MA.

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Mr. Gould announced to the audience and the Board that he was an abutter. Chairman Furbush asked the applicant if he would allow Mr. Gould to vote. This was duly noted by the applicant and agreed to allow Mr. Gould to vote and would proceed with the hearing.

Ms. Jean Bowden, with Capizzi Home Improvement represented the homeowners for their house project. Also present was Andrew Fietek, homeowner. Mr. Fietek is proposing and addition to extend the kitchen to improve the living space for his family. The house was built in 1977 and sits on a lot size of 13,896 square feet. The current space is not conducive for their needs and he would like to create a more functional area for his family.

Jean provided the Board with a rendering of the new addition, a site plan, and photos of the current house.

Mr. Furbush read a letter of an abutter who resides at 30 Shorewood Drive who is in favor of the addition. He also read another abutter letter who resides at 16 Quail Hollow Road who was also in favor of the addition.

Mr. Furbush read the Inspection Department, Conservation and Board of Health comments into the record.

Mr. Blaisdell made a motion to approve the Written Finding with the following conditions; Certified Plot Plan–Fietek Residence, 38 Shorewood Dr., Mashpee, MA, Date: Oct. 21, 2016, Scale: 1"=30', Drawn: RBS, Job #: S273, DWG. CPP, Eastbound Land Surveying, Inc. PO Box 442 Forestdale, MA 02644, 508-477-4511, signed by Robb Sykes, PLS, dated: 10/21/16. A Floor Plan – Kari and Andrew Fietek, 38 Shorewood Drive, Mashpee, Mass, 02649, Sales: DC, Design: BL, Kitchen Addition/Renovation Bathroom, Dated: 4/8/16, Revisions: 4/19/16, 6/27/16, 8/3/16, 10/13/16, 11/20/16, Capizzi Home Improvement, 1645 Newtown Road, Cotuit, Mass, 02645, Note: These plans are for the sole purpose and use of Capizzi Home Improvement and are not to be distributed or used for construction other than by Capizzi Home Improvement. Also conditioned upon all the department comments read into the record.

Mr. Gould seconded, yes, Mr. Pittsley yes, Mr. DeBarros, yes, Mr. Blaisdell, yes, and Mr. Furbush yes. All were in favor.

Mr. Blaisdell made a motion to issue an 18.96 ft. Variance of the front yard setback. This is conditioned upon the same motion as made with the Written Finding, and all the department comments read into the record.

Mr. Pittsley seconded, yes, Mr. Gould, yes, Mr. DeBarros, yes. Mr. Blaisdell yes, Mr. Furbush yes. All were in favor.

118 Waterway: Owners, Thomas J. and Kristin E. Murray request a Written Finding under §174-17 of the Zoning Bylaws to raze and replace a single-family dwelling, garage, and pool on property located in an R-3 Zoning District, Map 105 Parcel 220, Mashpee, MA.

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118 Waterway: Owners, Thomas J. and Kristin E. Murray request a Variance from the side yard setback under §174-31 of the Zoning Bylaws to raze and replace a single-family dwelling, garage, and pool on property located in an R-3 Zoning District, Map 105 Parcel 220, Mashpee, MA.

Attorney, Kevin Kirrane represented the applicants for the raze and replace project. A representative from Archi-Tech Associates was also present. The lot consists of approximately 17,500 square feet, has 150 feet of frontage along Waterway, and also backs up against Popponesset Creek. Currently there is a single-family residence and an attached garage on the property that was constructed back in the late 1960's. The garage structure on the plan is a non-conforming structure and has 15 ft. from the proximity to the front yard street line, and less than 3 ft. from the northerly property line. There is 2.3 ft. on the northerly side yard line, and 15.3 ft. from the front yard setback. In addition, the dwelling does not conform, and is only setback 24.2 ft. from the front yard setback. There is a non-conforming side yard setback of 14.2 ft., and non-conforming lot coverage of 21.45%.

The proposal is to replace the two separate structures and combine them into one single-family structure, with an attached garage and pool. The lot coverage is also being slightly reduced from 21.45% to 21.21%. There will also be a new state-of-the-art Title V septic system installed. The lot has substantial vegetation and mature trees along both property lines, and the 2+ ft. variance relief requested for the northerly side will not have any adverse impact on the abutting property owner.

Attorney Kirrane said he applied for that Variance on the northerly side of the property notwithstanding the fact that there was a non-conformity side yard setback on the other side of the property. He didn't know what the Boards approach would be relative to considering the entire building as a side yard setback relief, or by creating a 12.1 ft. non-conformity on the northerly side as opposed to the southerly side which creates a brand new non-conformity, so as such applied for that variance relief which is 2.9 ft. on the northerly side of the property, and eliminating the non-conformity on the other side of the property.

Attorney Kirrane pointed out to the Board that the homeowners prefer to keep the vegetation and mature trees to create privacy from the abutting properties. He concluded that the proposed new dwelling project will have sufficient parking, and will have the adequate setbacks consistent with the neighborhood.

Mr. Furbush read the Board of Health, Conservation, and Inspection Department comments into the record.

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Mr. Blaisdell made a motion to approve the Written Finding request with the following conditions; the project meets all the conditions of a Written Finding under Mass General Law 40A Section 6. A plot plan submitted by BSS Design, Proposed House and Subsurface Sewage Disposal System Upgrade Prepared for Thomas & Kristen Murray, 118 Waterway, Mashpee, MA. Scale: 1" = 20', dated: Nov. 22, 2016, Drawn: EJP, TJB, MRT, Checked: JER, Job Number: 16079, Revisions: Rotated house and added cantilever, adjusted septic system Dec. 5, 2016, TJB, Added Trees to be removed and marsh off-set to pool patio, Dec. 19, 2016, MRT. Title: Site Plan: 2 of 3, Drawing Number: B24-41. Conditioned upon all department comments read into the record.

Mr. Blaisdell made a motion to issue a Variance of 2.9 ft. on the northerly side yard setback, and is conditioned on all previous comments from the Written Finding read into the record.

387 Nathan Ellis Highway: Petitioner, Joseph Vittorini, DBA Nantucket Body Art, requests a Special Permit under §174-24 (K) of the Zoning Bylaws to allow for a tattoo parlor located in a C-1 Zoning District, Map 72 Parcel 57A, Mashpee, MA. (Owner of Record: VCMAR Mashpee LLC).

Mr. Gould announced to the audience and the Board that he was an abutter. Chairman Furbush asked the applicant if he would allow Mr. Gould to vote. This was duly noted by the applicant and he agreed to allow Mr. Gould to vote and would proceed with the hearing.

Attorney Mark Gildea represented the applicants seeking a Finding and Special Permit for the proposed tattoo studio at the commercial complex next to the Dino's building. The applicants were also present. Attorney Gildea said that the applicants operated a tattoo studio on Nantucket for nearly 8 years. He said they have been working with the Town for their business application for about six months. They contacted and worked with the Board of Health through their entire process. The applicants are fully licensed as practitioners as required for the establishment and will be a licensed establishment by the Board of Health pending final inspection. The Town has issued and approved a business certificate, License Number: 2016-164, which was signed by the Town departments.

Attorney Gildea said the reason he is presenting this petition to Board is that the definition of tattoo studio is not found in the Zoning Bylaws under §174-25 Table of Uses. He said that tattoo studios are now available in other cities and towns and are listed in their bylaws as allowable use. The Attorney was instructed by the Building Inspector to apply with the ZBA because the use was not specifically set forth in the statute. He mentioned that Section 174-24 (K) specifically allows this use as he quoted from the bylaw stating; "construction, operation, traffic and environmental impact to a specific use allowed as of right or by Special Permit in said district and it is substantially dissimilar in those respects from any uses prohibited in the district." The Attorney also mentioned that the Board could consider this use listed under Section 174-25 E (4) in a C1 District as a "Service Business". The Attorney concluded that this is a family business and would not be opened late at night.

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The Building Commissioner mentioned that the application may need to go in front of Plan Review if determined by the Attorney that he decides to consider the use for this business under Section 174-25 E (4), and he also mentioned the signage for the building.

The Board had a discussion if the application would require a filing with Plan Review because of the “use” is not specifically listed in the bylaws.

Betty Mendes, an abutter that resides at 17 Classic Circle is in opposition of the proposed tattoo studio.

Mr. Gould asked the applicant if he could hear his comments, and why he chose to do have his business in Mashpee.

Mr. Joe Vittorini approached the Board and said he left Nantucket because he wants to live on Cape Cod. He said that he looked into Mashpee under the recommendation of a friend and said the space looks like a good fit for him and his son. He mentioned that he has a great clientele. He said he has to follow stringent State guidelines as well as Town guidelines.

Mr. Blaisdell commented that he owned a building in Falmouth that had a tattoo studio, and there seemed to be more concern with Board of Health and did not have any issues.

Mr. Furbush read the Board of Health comments into the record. Mr. Furbush asked if the applicant would consider a one (1) year permit. The Attorney said that it would not be feasible.

Mr. Blaisdell made a motion to approve the Special Permit under §174-24 (K) for Joseph Vittorini, doing business as Forty-Six & 2 Tattoo Studio, 387 Nathan Ellis Highway, Mashpee, MA. Commonwealth of Mass, Town of Mashpee, Business Certificate, and License Number: 2016-164, granted November 21, 2016, Expiration Date: November 30, 2020. Signed by Deborah F. Dami, Mashpee Town Clerk.

1. The Board has determined that the applicant meets all the conditions of a Special Permit under Mass General Law 40A Section 9.
2. Conditioned on a floor plan; 387 Nathan Ellis Hwy, Unit 11.
3. Conditioned upon all department comments read into the record.
4. Conditioned that the hours of operation will be no later than 8:00 pm, and that the applicant would appear in front of the next Plan Review Committee Meeting.

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5. The Board also grants a Written Finding stating that the use may be allowed in this district as it is substantially similar to other uses (§174-25 E (4)). The Board found that the said use be allowed in this district as it is substantially similar in its construction, operation, traffic, and environmental impact to a specific use allowed as of right or by Special Permit in said district.
6. A Special Permit is hereby issued for the operation of this business at this location.

Mr. Pittsley seconded, yes, Mr. Furbush yes, Mr. Gould, yes, Mr. DeBarros, yes, and Mr. Blaisdell, yes. All were in favor.

OTHER BUSINESS

659 Main St.: Applicant, Lisa McAdams requests an informal meeting to discuss a proposed home occupation.

Ms. Lisa McAdams, of 8 Ships Lantern Drive, is the owner of “Talk to the Paws”, dog daycare business. She is proposing to relocate her business to a larger property that is currently a small farm. There are three buildable lots located next to this particular lot. She would like to have five (5) acres for the proposed kennels and doggy daycare, and she wants to know if this type of business is allowed. She spoke to the Building Department and was told that she might want to file under Section 174-24 (K). The Board determined that this particular application might be considered a filing under Section 174-25 E (7) which would require a Special Permit that relates to this type of business located in a commercial zone. The Board had a discussion and suggested she discuss her proposal to Tom Fudala, Town Planner.

Approve December 14, 2016 Meeting Minutes

Mr. Gould made a motion to approve the December 14, 2016 Meeting Minutes. Mr. Blaisdell seconded. All were in favor.

Mr. DeBarros made a motion to adjourn. Mr. Blaisdell seconded. All were in favor and adjourned at 8:10 pm.

Respectfully submitted;

Mary Ann Romero
Administrative Secretary
Zoning Board of Appeals